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Supreme Court, U.S.
FILED
MAY 30 2003
OFFICE OF THE CLERK

No. 02-117

In the Supreme Court of the United States

STATE OF MINNESOTA, PETITIONER

v.

JOAN MARTIN, GUARDIAN AD LITEM FOR TROY HOFF

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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32 pp

QUESTIONS PRESENTED

The federal Medicaid program, 42 U.S.C. 1396 *et seq.*, requires participating States to "take all reasonable measures to ascertain the legal liability of third parties" for medical expenses paid by Medicaid and to "seek reimbursement for such [medical] assistance to the extent of such legal liability." 42 U.S.C. 1396a(a)(25)(A) and (B). To that end, Medicaid beneficiaries must "assign the State any rights * * * to payment for medical care from any third party." 42 U.S.C. 1396k(a)(1)(A). Federal law also prohibits States from imposing any lien "against the property of any individual prior to his death on account of medical assistance paid." 42 U.S.C. 1396p(a)(1). The questions presented are:

1. Whether the anti-lien provision of 42 U.S.C. 1396p(a)(1) prohibits States from placing a lien for the cost of government-paid medical care on all causes of action or recovery rights that an injured medical-assistance recipient may have.

2. Whether the assignment provision of 42 U.S.C. 1396k(a) allows States to recoup government-paid medical costs from all recoveries that a medical-assistance recipient is entitled to receive from third parties before the recipient can recover any sums for himself.

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's order inviting the Solicitor General to express the views of the United States.

INTRODUCTION AND STATEMENT

This case arises at the intersection of the federal Medicaid statute's requirement that beneficiaries assign their rights to payment for medical care by third parties to the State, as a condition of receiving Medicaid, and Medicaid's protection of beneficiaries' property against liens for the cost of Medicaid benefits. With respect to the first question presented, the United States believes that, given the Minnesota Supreme Court's apparent interpretation of state property law principles and the state lien statute, that court's conclusion that petitioner's medical assignment lien is preempted by the Medicaid Act does not warrant review. With respect to the second question presented, the United States disagrees with aspects of the Minnesota Supreme Court's analysis of Medicaid's third-party liability provisions, but does not believe that this Court's review is necessary because the peculiar problem presented here is unlikely to arise often

and, in any event, the Medicaid program is sufficiently flexible to permit States to fulfill their third-party liability obligations consistent with varying state-law definitions of property and judicial procedures. Accordingly, further review is not warranted.

1. The federal Medicaid program, 42 U.S.C. 1396 *et seq.*, is a cooperative federal-state program under which the federal government provides funding to state programs that provide medical assistance to individuals "whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. 1396. States that choose to participate in the Medicaid program must submit a plan for medical assistance that conforms to the requirements of the Medicaid statute. See 42 U.S.C. 1396a; 42 C.F.R. 430.10. "Medicaid is intended to be the payer of last resort" for needy individuals. S. Rep. No. 146, 99th Cong., 1st Sess. 312 (1985). Consequently, "other available resources must be used before Medicaid pays for the care of an individual enrolled in the Medicaid program." *Ibid.*

In some instances, a Medicaid beneficiary's need for medical care arises from circumstances, such as an automobile accident, that render a third party liable for the costs of the beneficiary's medical care. Where Medicaid benefits have been paid before that third party's liability is established, the Medicaid statute requires the State to recover the cost of its expenditures from the responsible third party, as long as "the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery" effort. 42 U.S.C. 1396a(a)(25)(B). To that end, a State's Medicaid plan must provide "that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties * * * to pay for care and services available under the plan." 42 U.S.C. 1396a(a)(25)(A). Those measures must include "the collection of sufficient information" from the beneficiary to "enable

the State to pursue claims against such third parties." 42 U.S.C. 1396a(a)(25)(A)(i). Medicaid beneficiaries must "cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan." 42 U.S.C. 1396k(a)(1)(C).

Once third-party liability is identified, the State must "seek reimbursement for [its medical] assistance to the extent of such legal liability," 42 U.S.C. 1396a(a)(25)(B), and the state plan must identify how those claims will be pursued, 42 U.S.C. 1396a(a)(25)(A)(ii). One important component of that effort is the requirement that States have in effect

> laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services.

42 U.S.C. 1396a(a)(25)(H). Thus, each Medicaid plan must require, as a condition of eligibility, that the recipient "assign the State any rights * * * to payment for medical care from any third party." 42 U.S.C. 1396k(a)(1)(A); see also 42 U.S.C. 1396a(a)(45).

Once money is collected from a liable third party, the Medicaid statute accords priority to the State's claim for reimbursement of Medicaid benefits. The State is required to "retain[]" "[s]uch part of any amount collected * * * as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom [the] assignment was executed." 42 U.S.C. 1396k(b). The State, in turn, must reimburse the federal government for its share of those payments. *Ibid.* Only after the State's and federal government's claims have been fully satisfied will "the re-

mainder of such amount collected" be paid to the beneficiary. *Ibid.*[1]

Finally, the Medicaid statute insulates the assets of beneficiaries from States' collection efforts by directing that "[n]o lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan." 42 U.S.C. 1396p(a)(1).

The Secretary of Health and Human Services (Secretary), through the Centers for Medicare and Medicaid Services (formerly, the Health Care Financing Administration, see 66 Fed. Reg. 35,437 (2001)), administers the federal Medicaid program. The Secretary has promulgated regulations and issued formal adjudications that implement the third-party liability provisions of the Medicaid program. See 42 C.F.R. 433.137 *et seq.*

2. Petitioner is a participating State in the Medicaid program. In an effort to comply with Medicaid's third-party liability requirements, Minnesota law requires beneficiaries to assign to the State "all rights the person may have to medical support or payments for medical expenses * * * [and] to cooperate with the state in * * * obtaining third party payments." Minn. Stat. Ann. § 256B.056, subdiv. 6 (West 1998 & Supp. 2003). Furthermore, the beneficiary must agree to "apply all proceeds received or receivable * * * from any third person liable for the costs of medical care." *Ibid.*

Complementing the right of assignment, Minnesota law provides that, when the State provides medical assistance to a recipient who "has a cause of action arising out of an

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[1] The Secretary allows for deduction of the costs of obtaining the award, including attorneys' fees, before reimbursement of the Medicaid program. Department of Health and Human Servs., Centers for Medicare and Medicaid Servs., State Medicaid Manual § 3907, *available at* <www.cms.gov/manuals/45_smm/sm_03_3_toc.asp>.

occurrence that necessitated the payment of medical assistance," the State "shall be subrogated, to the extent of the cost of medical care furnished, to any rights the person may have * * * under the cause of action." Minn. Stat. Ann. § 256B.37, subdiv. 1 (West 1998 & Supp. 2003). The State's subrogation right "includes all portions of the cause of action, notwithstanding any settlement allocation or apportionment that purports to dispose of portions of the cause of action not subject to subrogation." *Ibid.*

Lastly, Minnesota law imposes an automatic lien for "the cost of the care upon any and all causes of action * * * which accrue to the person to whom the care was furnished, * * * as a result of the illness or injuries which necessitated the medical care." Minn. Stat. Ann. § 256B.042, subdiv. 1 (West 1998 & Supp. 2003). The lien is to be satisfied out of the judgment, award, or settlement of the cause of action. *Id.* § 256B.042, subdiv. 5.

3. a. After a car accident in 1991 left her son, Troy Hoff, permanently and totally disabled, respondent Joan Martin filed an application for Medicaid benefits on behalf of her son. Pet. App. A10-A11. By signing the Medicaid application, Martin assigned to petitioner "any rights to payment for medical care from any third party for myself or my dependents." Br. in Opp. App. RA1. Petitioner has since provided more than $600,000 in medical care for Hoff. Pet. App. A13 n.5. Petitioner filed a medical assistance lien for past and future medical bills. *Id.* at A11.

Respondent subsequently filed suit in state court against the estate of the driver of the vehicle involved in the accident and against various local governmental entities, seeking damages for Hoff's medical care, pain and suffering, lost earnings, and other general and specific damages. Pet. App. A11. Respondent impleaded petitioner as a plaintiff. *Ibid.* Petitioner filed a cross-claim asserting a right to reimbursement for its Medicaid expenditures. *Id.* at A12. Respondent

eventually settled with the three defendants for $220,000. *Ibid.* The trial court then determined that the underlying tort litigation should be settled immediately and that respondent and petitioner could separately resolve their dispute over entitlement to the settlement proceeds. *Id.* at A12-A13. Petitioner and respondent accordingly released each of the defendants from liability and stipulated that all claims should be dismissed with prejudice. *Ibid.*

b. In litigation over the settlement proceeds, petitioner claimed approximately $58,500 of the settlement as reimbursement for its $600,000 expenditure on Hoff's medical care. Pet. App. A13 & n.5. Respondent moved to dismiss on the ground that petitioner's claim was barred by Medicaid's anti-lien provision, 42 U.S.C. 1396p. Pet. App. A14. The state trial court agreed, *id.* at A78-A83, holding that the settlement proceeds were "the sole and exclusive property of" Hoff, and that Medicaid's anti-lien provision precluded petitioner from obtaining that property through either a medical assistance lien or subrogation, *id.* at A82.

The Minnesota court of appeals reversed, Pet. App. A68-A77, concluding that the medical assistance lien was simply a "device to protect the state's legitimate subrogation interest," *id.* at A75.

4. a. The Minnesota Supreme Court reversed. Pet. App. A1-A67. The majority held that Minnesota's medical assistance lien, assignment, and subrogation statutes are inconsistent with Medicaid's anti-lien provision because they trench upon Medicaid recipients' property rights. The court first held that a cause of action is personal property under Minnesota law, *id.* at A18, and that the state-law lien "upon any and all causes of action" conflicts with, and is therefore preempted by, the federal anti-lien provision, *id.* at A30-A31.

Characterizing the plaintiff's cause of action as a "bundle of sticks," the majority further reasoned that "a medical assistance recipient assigns to the state one stick from that

bundle—the specific claim to recover medical expenses from those responsible"—but "retains ownership of the remaining sticks in the bundle," such as the claims for pain and suffering and other measures of loss. Pet. App. A29. The court then concluded that any settlement proceeds satisfying those non-assigned claims "are the recipient's personal property, and as such are protected by the federal anti-lien provision" against subrogation or collection pursuant to the assignment. *Ibid.* The court then remanded the case to the district court for an allocation of the settlement proceeds between respondent's claims and petitioner's claim for medical compensation. *Id.* at A53-A54.

b. Three Justices dissented. Pet. App. A54-A67. They reasoned that the application for Medicaid benefits resulted in a "broad assignment" of "*all* proceeds from a liable third party" and "*any* rights to third-party payments," and that once the assignment was made, "the anti-lien provision was no longer operative because the recipient's causes of action (to the extent of the state's expenditures) were no longer [respondent's] property." *Id.* at A55. The dissent concluded that such an approach was necessary to "prevent[] manipulation of tort awards by recipients who seek to prevent the public from being reimbursed for the funds it has advanced for their medical care," *id.* at A64 (citation omitted), noting that, under the court's ruling, petitioner will have to "continue to pay for Troy Hoff's medical expenses while [respondent] has at her disposal not insignificant funds from liable third-party tortfeasors that might be used to satisfy that obligation." *Id.* at A66.

DISCUSSION

1. The first question presented—whether the Medicaid anti-lien provision prohibits petitioner from placing a lien on a Medicaid recipient's causes of action or recovery rights, Pet. i—does not merit this Court's review. The Medicaid anti-lien provision generally provides that "[n]o lien may be

imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State [Medicaid] plan." 42 U.S.C. 1396p(a)(1). Minnesota law authorizes the imposition of a medical assistance lien "for the cost of the care upon any and all causes of action or recovery rights * * * which accrue to the person to whom the care was furnished, or to the person's legal representatives, as a result of the illness or injuries which necessitated the medical care." Minn. Stat. Ann. § 256B.042, subdiv. 1 (West 1998 & Supp. 2003).

Minnesota law regards a cause of action or legal right to recovery to be a species of personal property. Pet. App. A18. In addition, the Minnesota Supreme Court in this case appears to have concluded, as a matter of state law, that each potential element of damages, in what might ordinarily be considered to be a unitary personal-injury cause of action, is a separate "claim" or "stick" in a bundle of rights within the cause of action, and is therefore a distinct property right. See *id.* at A28-A29. The court then concluded that, by authorizing the imposition of a lien on all of those distinct personal property rights—that is, elements of damages in a cause of action beyond the State's assigned right to recover payment for medical care—the Minnesota lien provision conflicts with the Medicaid anti-lien provision. See *id.* at A29-A31. Given the apparent underlying premise of the court's ruling, that the state-law cause of action is divisible into separate property rights for various elements of damages, that ruling does not warrant review by this Court.

Petitioner contends that this aspect of the Minnesota Supreme Court's decision conflicts with the rulings of the highest courts of three other States. See Pet. 15 (citing *Wilson* v. *Washington*, 10 P.3d 1061 (Wash. 2000), cert. denied, 532 U.S. 1020 (2001); *Wallace* v. *Estate of Jackson*, 972 P.2d 446 (Utah 1998), cert. denied, 528 U.S. 810 (1999); and *Cricchio* v. *Pennisi*, 683 N.E.2d 301 (N.Y. 1997)). That argu-

ment overlooks the distinct analytical basis in state property law that underlay the Minnesota Supreme Court's conclusion that the state lien statute intrudes on property rights protected by the Medicaid anti-lien provision.

In *Wilson*, Washington law imposed a lien, not upon all of a beneficiary's causes of action or all of its component "claims" for relief, but upon "any recovery" by the beneficiary from the "tort feasor or the tort feasor's insurer." 10 P.3d at 1064 (quoting Wash. Rev. Code § 43.20B.060(2) (1994)). State law further required, consistent with the Medicaid law, 42 U.S.C. 1396k, that the beneficiary's "rights to payment from third parties" were assigned to the State at the time benefits were applied for and received. 10 P.3d at 1065. Reading the lien and assignment provisions together, the Washington Supreme Court concluded that the lien did not violate the Medicaid anti-lien provision because "the department steps in and puts a lien on the recovery before it becomes the property of the Medicaid recipient." *Id.* at 1066. The Washington lien, in other words, attached to a monetary "recovery" that, while perhaps physically in the hands of the beneficiary, had already been assigned to the State and thus never became the personal property of the beneficiary. See also *Wallace*, 972 P.2d at 447-448 (lien attaches to the "proceeds payable to the recipient by a third party," and thus to the "property of the third party") (citation omitted); *Cricchio*, 683 N.E.2d at 304-305 (lien attaches to "any verdict, judgment or award" and to the "proceeds of any settlement," which are "resources of the third-party tortfeasor that are owed to [the State]").[2]

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[2] We note that the Minnesota lien statute contemplates that the lien will be satisfied out of the judgment, award, or settlement of the cause of action. See Minn. Stat. Ann. § 256B.042, subdiv. 5 (West 1998 & Supp. 2003). The Minnesota Supreme Court did not focus on that aspect of the state lien provision.

The Minnesota Supreme Court's decision that petitioner's lien provision is preempted because it attaches, at the threshold, to each discrete damages element of a cause of action—which the state supreme court considered to be distinct personal property rights—thus does not conflict with any of those decisions because the Washington, Utah, and New York liens do not attach to any personal property of the Medicaid beneficiary, as defined by state law. Rather, each of those liens attach to proceeds in the hands of a third party that have already been validly assigned to the State. Compare Department of Health & Human Servs., Regional Identical Letter, No. 94-134, reproduced at Pet. App. A236 (States "may not impose a lien on any of the recipient's property which has not been assigned" to the State).[3]

In short, because the decision of the Minnesota Supreme Court invalidating the lien on respondent's cause of action appears to turn on that court's interpretation of state property law, does not squarely conflict with the rulings of other courts, and involves an interpretive issue and a legal context that do not arise with frequency in state Medicaid programs, see note 3, *supra*, further review of the first question presented is not warranted.[4]

2. Petitioner also seeks review of the Minnesota Supreme Court's holding that the Medicaid assignment and

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[3] Only a handful of States impose liens on beneficiaries' causes of action. See Conn. Gen. Stat. Ann § 17b-93(a) (West 1998 & Supp. 2003) (authorizing a lien "against property of any kind or interest in any property, estate or claim of any kind"); Fla. Stat. Ann. § 409.901(6)(a) (West 1998 & Supp. 2003) (lien against "[a]ny and all causes of action, suits, claims, counterclaims, and demands that accrue" to the recipient); Wyo. Stat. Ann. § 42-4-202 (2001) (lien on "any and all causes of action").

[4] While the Secretary has identified Minnesota's subrogation statute as an exemplary mechanism for enforcing third-party liability, the Secretary has not specifically endorsed Minnesota's lien provision. See United States Dep't of Health & Human Servs., Health Care Financing Admin., *Third Party Liability in the Medicaid Program: A Guide to Successful State Agency Practices* 114, 125 (Sept. 1990).

anti-lien provisions permit States to recoup their Medicaid costs only from those portions of a settlement designated to be compensation for medical care. The Minnesota Supreme Court reasoned that allowing recovery, through assignment or subrogation, from any other portion of the settlement would trench upon the beneficiaries' property rights in their other claims for damages. See Pet. App. A32-A40. While the Minnesota Supreme Court's decision was erroneous, the practical import of its ruling is not clear in light of the proceedings that the court has ordered on remand and the particular litigation context in which the ruling arises. Therefore, this Court's review is not warranted at this time.

a. The government largely agrees with petitioner (Pet. 18-20) that the Minnesota Supreme Court's holding turned upon an unduly narrow conception of the State's right to collect payment from third parties and an unduly broad application of the federal anti-lien provision as precluding States from undertaking any recovery efforts beyond claiming the compromise value of a tort claim that is attributable to medical damages.

First, the Medicaid statute requires States broadly to ascertain the "legal liability" of third parties "to pay for care and services" rendered under the Medicaid program, 42 U.S.C. 1396a(a)(25)(A), and, importantly, to pursue recovery to the full "*extent of such legal liability*," 42 U.S.C. 1396a(a)(25)(B) (emphasis added), not just to the compromise value assigned to that claim by private parties during settlement negotiations. See also 42 U.S.C. 1396k(a)(1)(A) (assigning right "to payment for medical care"); *Wilson*, 10 P.3d at 1066 ("[T]he assignment is for the right of payment from the third party, not solely the right to pursue a cause of action against the third party."). Accordingly, contrary to the Minnesota Supreme Court's view (Pet. App. A33-A35), the States' obligation to recover from third parties, which the assignment provision implements, is not satisfied by affording

the State only the *compromise* value of a single "stick" (*id.* at A46) in a settled cause of action. The Medicaid statute requires that the State be vested with the right to full payment of medical expenses by a third party liable for causing the injuries that triggered the need for medical care. Cf. *United States* v. *Lorenzetti*, 467 U.S. 167, 173-178 (1984) (under the Federal Employees' Compensation Act, the federal government has a right to reimbursement of funds expended if the beneficiary receives a damages award from a liable third party, regardless of how those damages are characterized).

The assignment provision, moreover, does not exhaust the mechanisms a State may use to recover medical expenses from liable third parties. Congress described the assignment as just one means—albeit a statutorily mandated one—"of assisting in the collection" process. 42 U.S.C. 1396k(a). Another component of the collection process is the requirement that beneficiaries cooperate with the State in identifying and pursuing liable third persons, and collecting full compensation for the Medicaid program, 42 U.S.C. 1396k(a)(1)(C), to the full "extent of [third party] legal liability" to the beneficiary, 42 U.S.C. 1396a(a)(25)(B). See also 42 C.F.R. 433.147(b)(4) ("[e]ssentials of cooperation" include "[p]ay[ing] to the agency any support or medical care funds received that are covered by the assignment of rights"). The statutory requirement that Medicaid claims be given priority in the distribution of recoveries from liable third parties, 42 U.S.C. 1396k(b), reinforces that obligation. Together, those third-party liability provisions ensure that the State steps into the shoes of the beneficiary and becomes entitled to all the funds from a liable third party that the beneficiary "could have recouped had she paid for the medical services herself." *Calvanese* v. *Calvanese*, 710 N.E.2d 1079, 1082 (N.Y.), cert. denied, 528 U.S. 928 (1999).

Second, the Secretary's interpretation of those provisions, through formal adjudications by the Departmental Appeals Board (Board), see 45 C.F.R. 16.1 to 16.23 & App. A; 42 C.F.R. 430.42(b), confirms that broad understanding of the third-party liability provisions. In *In re California Department of Health Services*, Dec. No. 1504 (HHS Jan. 5, 1995) (*reprinted in* Pet. App. A197-A213), and *In re Washington State Department of Social and Health Services*, Dec. No. 1561 (HHS Feb. 7, 1996) (*reprinted in* Pet. App. A214-A234), the Board interpreted the third-party liability provisions to require that Medicaid be reimbursed in full from a tort settlement before settlement funds may be allocated to other purposes, such as compensating the beneficiary for pain and suffering or other damages.

In the *California* case, the Board found invalid a California law that automatically set aside 50% of settlement proceeds for beneficiaries. Pet. App. A197-A198. The Board explained that the fundamental premise of the third-party liability provisions is that, "where a third party has caused the need for medical care and is liable for its payment, the Act looks to that third party to reimburse the public." *Id.* at A206. The Board further interpreted the provisions requiring beneficiaries to assign their rights to payment for medical care, to the full "extent of [the third party's] legal liability," 42 U.S.C. 1396a(a)(25)(B), as "condition[ing] the availability of Medicaid funds on the recipient's agreement to reimburse Medicaid to the extent of a third party's liability," Pet. App. A206. Those provisions, the Board concluded, give Medicaid "superior status to the recipient in relation to the tortfeasor to recover costs," and allowed the Secretary "to characterize [settlement] recoveries from third parties first as payments for medical care." *Id.* at A206-A207. See also *Washington*, Pet. App. A215 (discretionary, case-by-case reductions in Medicaid collections were impermissible because Medicaid "must be fully reimbursed for the federal share

before the recipient may receive any money from a [third-party liability] settlement or award").[5]

Third, according Medicaid compensation priority over other elements of damages furthers the purpose of the third-party liability provisions, which is "to make Medicaid the payor of last resort where there is a liable third party, so as to reduce Medicaid expenditures." *California*, Pet. App. A203. Indeed, the animating purpose of the third-party liability provisions, since their inception 35 years ago, has been to compensate the public fisc for medical care provided "because of an accident or illness for which someone else has fiscal liability." S. Rep. No. 744, 90th Cong., 1st Sess. 184 (1967). In 1985, Congress confirmed that "Medicaid is intended to be the payer of last resort" and that "other available resources must be used before Medicaid pays for the care of an individual enrolled in the Medicaid program." S. Rep. No. 146, *supra*, at 312; see also State Medicaid Manual, *supra*, § 3909 ("Medicaid is the payer of last resort.").

Fourth, to the extent it has transformed the broad third-party liability recovery obligation into a narrow right to recover only the compromised amount of the particular element of damages that might be attributed to medical expenses, the Minnesota Supreme Court's ruling would provide plaintiff beneficiaries a windfall at the expense of other Medicaid beneficiaries and the taxpaying public. The beneficiary received substantial medical benefits at public expense, and the government provided those benefits only "on the condition that it would be reimbursed" by a liable third party. *California*, Pet. App. A206. Allowing the full "extent of [a third party's] legal liability," 42 U.S.C. 1396a(a)(25)(B), to be carved up on a pro rata basis between Medicaid

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[5] See also *Washington*, Pet. App. A220-A221; State Medicaid Manual, *supra*, § 3907 ("In liability situations, the Medicaid program must be fully reimbursed before the recipient can receive any money from the settlement or award.").

reimbursement and other damages sought by the beneficiary would leave the taxpayers picking up more of the beneficiary's tab for medical expenses, while the beneficiary diverts available compensation from the third party to his own pocket. Such an approach also would promote "manipulation of tort awards by recipients," who could "prevent the public from being reimbursed" for the cost of their medical care by the manner in which they allocate their settlements. Pet. App. A207. Permitting a Medicaid beneficiary to insist, after benefits already have been received, that settlement payments from a third party are not compensation for medical bills, when, as a practical matter, those same funds would have to be dedicated to paying outstanding medical bills if Medicaid had not stepped in, would empty the assignment and cooperation obligations of significant force.

Requiring that Medicaid be reimbursed first, on the other hand, ensures that tortfeasors, who have "caused the need for medical care and [are] liable for its payment," cannot force the public to cover the victim's medical costs. *Washington*, Pet. App. A221. It also equalizes the positions of Medicaid beneficiaries and those individuals who bear the costs of their own medical care: "If Medicaid had not paid [the beneficiaries'] medical expenses, these recipients would have both unrestricted access to their settlements and enormous medical debts to be paid from those settlements." *California*, Pet. App. A210.[6]

The Minnesota Supreme Court thus fundamentally erred in equating the compromised value of the medical damages element of a cause of action with the full compensation for medical costs that Medicaid mandates. Absent that critical misunderstanding about the scope of the recoupment right

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[6] Under Medicare, the government likewise must be reimbursed in full before tort settlement proceeds may be used for other purposes. See 42 U.S.C. 1395y(b)(2)(B)(ii); 42 C.F.R. 411.24(c). See generally *Zinman* v. *Shalala*, 67 F.3d 841, 845 (9th Cir. 1995).

assigned to the State, the court would have had no basis for concluding that Medicaid's anti-lien provision prohibited (through preemption) petitioner's efforts to enforce the very right to compensation that the third-party liability provisions had already transferred to the State. Cf. *Washington State Dep't of Soc. & Health Servs.* v. *Guardianship Estate of Keffeler*, 123 S. Ct. 1017, 1024-1025 & n.7 (2003) (Social Security Act's anti-lien provision should be harmonized with other statutory provisions).

b. The United States also agrees with petitioner (Pet. 18-20) that the Minnesota Supreme Court's decision conflicts with the decisions of the highest courts of other States and with three federal courts of appeals. Virtually all of the other state and federal courts of appeals to decide the question have upheld and enforced the requirement that Medicaid be reimbursed in full before tort settlement proceeds can be applied to other purposes.[7]

c. Lastly, the United States agrees with petitioner (Pet. 20-23) that the Minnesota Supreme Court erred in failing to defer to the Secretary's interpretation and implementation

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[7] See *Sullivan* v. *County of Suffolk*, 174 F.3d 282, 286 & n.5 (2d Cir.), cert. denied, 528 U.S. 950 (1999); *Norwest Bank of N.D.* v. *Doth*, 159 F.3d 328, 332-333 (8th Cir. 1998) (applying Minnesota law); *Copeland* v. *Toyota Motor Sales U.S.A., Inc.*, 136 F.3d 1249, 1258 (10th Cir. 1998); *Houghton* v. *Department of Health*, 57 P.3d 1067, 1069 (Utah 2002), cert. denied, 123 S. Ct. 1632 (2003); *Grey Bear* v. *North Dakota Dep't of Human Servs.*, 651 N.W.2d 611, 617-618 (N.D. 2002), petition for cert. pending, No. 02-7669; *Wilson*, 10 P.3d at 1066; *Calvanese*, 710 N.E.2d at 1081-1082; *S.S.* v. *Utah*, 972 P.2d 439, 442-443 (Utah 1998); *Roberts* v. *Total Health Care, Inc.*, 709 A.2d 142, 148-149 (Md. 1998); *Grayam* v. *Department of Health & Human Res.*, 498 S.E.2d 12, 20-21 (W. Va. 1997); *Waldman* v. *Candia*, 722 A.2d 581, 586-587 (N.J. Super. Ct. App. Div.), certif. granted, 731 A.2d 45 (N.J. 1999), certif. dismissed, 767 A.2d 480 (N.J. 2000); *Payne* v. *North Carolina Dep't of Human Res.*, 486 S.E.2d 469, 471 (N.C. Ct. App. 1997); cf. *Zinman*, 67 F.3d at 844-845 (same, under Medicare program); but see *Arizona Health Care Cost Containment Sys.* v. *Bentley*, 928 P.2d 653, 656 (Ariz. Ct. App. 1996) ("'Medical benefits' does not include tort settlement proceeds.").

of the third-party liability provisions. Nothing in the statutory text speaks directly to how the third-party liability provisions are to be implemented in the context of settlement awards. Nor are the exact scope of the beneficiaries' assignment, the States' recoupment duties, or the beneficiaries' duty of cooperation defined. How those third-party liability provisions operate in practice, and intersect with Medicaid's anti-lien provision, present the very type of "complex and highly technical issues" that the Secretary has been "granted exceptionally broad authority" to address. *Wisconsin Dep't of Health & Family Servs.* v. *Blumer*, 534 U.S. 473, 497 (2002) (citations omitted). In this case, the Secretary's interpretation is embodied not only in informal agency guidance, but also through formal adjudications by the Departmental Appeals Board, which merit broad deference because they represent authoritative and longstanding interpretations by the agency of matters falling squarely within its expertise.

d. Nevertheless, on balance, review by this Court is not warranted at the present time. States like petitioner retain considerable flexibility under the Medicaid program to adapt their state recovery programs to varying state-law conceptions of property and judicial procedure, so as to prevent a reduction in Medicaid recoveries.

As an initial matter, the problem of properly allocating tort awards to compensate Medicaid arises only in cases where both the third-party liability litigation is settled *and* the State has not actively protected its claim to compensation in the settlement. It appears that petitioner frequently enforces its assigned right to payment for medical care passively, awaiting litigation by the beneficiary against the third party and then seeking to recover out of whatever judgment results from that private effort. While the Medicaid statute provides States significant flexibility in the methods and procedures adopted to implement the third-

party recovery provisions, the statutory text and regulatory interpretation also contemplate more active protection by the State itself of its assigned right, especially if reliance on suits by beneficiaries cannot effectively ensure reimbursement of the Medicaid program.[8] And the legislative history confirms what the statutory text indicates. "Beneficiaries are not required to pursue the collections themselves. Pursuit is the responsibility of the provider or the State." H.R. Conf. Rep. No. 453, 99th Cong., 1st Sess. 544-545 (1985).

The Board similarly has emphasized the responsibility of the States themselves for prosecuting such claims where necessary to fulfill the requirements of the Medicaid statute. Each State "has an obligation to seek third party reimbursement [] 'to the extent of such liability,'" and the State's reliance on "lawsuits by recipients and private attorneys" does not "obviate [the State's] obligation * * * to seek third party reimbursement or [] change the distribution methodology" established by federal law. *California*, Pet. App. A205. "Further, unless these private attorneys are considered to be acting on behalf of the State so that the 'collections' that they effectuate are subject to the distribution requirements" of the Medicaid law—that Medicaid be reimbursed first and in full—then States "cannot reasonably rely on their efforts" alone to satisfy their obligations under the Medicaid program. *Id.* at A205-A206. See also 42 C.F.R. 433.139(d)(2) (States "must seek recovery of reimbursement within 60 days after the end of the month [they] learn[] of

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[8] See 42 U.S.C. 1396a(a)(25)(A)(i) (State must collect "sufficient information * * * to enable the *State to pursue* claims against [liable] third parties") (emphasis added); 42 U.S.C. 1396a(a)(25)(B) ("the *State or local agency will seek reimbursement* for [medical] assistance to the extent of such legal liability") (emphasis added); 42 U.S.C. 1396k(a)(1)(C) (beneficiaries must "provid[e] information to assist the State in pursuing" liable third parties); 42 U.S.C. 1396k(b) (allocation scheme for "any amount *collected by the State*" under an assignment) (emphasis added).

the existence of the liable third party."); 42 C.F.R. 433.153 (incentive payments to States for third party recoveries).

Accordingly, while States may appropriately rely on the efforts of private litigants as long as the state law applicable to such efforts does not interfere with Medicaid's reimbursement requirements, when state law precludes effective indirect enforcement, the state and federal interests still may be fully protected by the State's active enforcement of its right to payment either in litigation or, at least, during any settlement negotiations. Alternatively, the State of Minnesota could enact legislation or adopt regulations prohibiting the state courts from approving, or any Medicaid beneficiary from acceding to, any settlement that does not give priority to reimbursement of the State's medical costs. Such a condition on settlement of a suit in which the State has a substantial stake—and, indeed, received an assignment from the beneficiary—would not trench upon any of the beneficiary's other perceived property interests in the litigation.

Finally, the Minnesota Supreme Court remanded this case for the trial court to conduct "further proceedings" and then allocate the $220,000 settlement among petitioner's claim for medical compensation and respondent's "nonassigned personal injury claims." Pet. App. A53. The Minnesota Supreme Court did not specify a particular approach to that allocation. Petitioner's participation in that proceeding, with recognition that the Medicaid statute allows States to factor cost-effectiveness into their recovery efforts, 42 U.S.C. 1396a(a)(25)(B), thus could largely, if not fully, satisfy petitioner's $58,500 claim in this particular proceeding.[9] And, in

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[9] Indeed, the Internal Revenue Service routinely employs such adversarial settlement-allocation procedures to determine which portions of a settlement recovery are properly subject to taxation. See, *e.g.*, *Delaney* v. *Commissioner*, 99 F.3d 20, 24 & n.3 (1st Cir. 1996); *Robinson* v. *Commissioner*, 70 F.3d 34 (5th Cir. 1995), cert. denied, 519 U.S. 824 (1996); see also *Certain Underwriters at Lloyd's, London* v. *Oryx Energy Co.*, 203 F.3d 898, 901 (5th Cir. 2000) (allocation hearings for insurance companies).

all future cases, petitioner can decline to settle with the third-party defendants unless the settlement provides for appropriate recovery of Medicaid costs.

In sum, the impact of the Minnesota Supreme Court's decision is limited to those instances in which a State fails actively to protect its interests in settlement proceedings. And even that problem can be redressed through changes in state litigation practices, modifications of state law or regulations, or alteration of the assignment provision to limit a beneficiary's ability to accede to settlement terms that do not fully protect the interests of the Medicaid program. The opportunity for further exploration of those avenues of relief by petitioner, in coordination with the Department of Health and Human Services' Center for Medicare and Medicaid Services, makes it unnecessary for this Court to exercise its certiorari jurisdiction at this time in this complex area of coordinated federal and state efforts.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 2003

APPENDIX

SELECTED PROVISIONS OF THE MEDICAID ACT, 42 U.S.C. 1396 *et seq.*

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

* * * * *

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)]), service benefit plans, and health maintenance organizations) to pay for care and services available under the plan, including—

(i) the collection of sufficient information (as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval systems required under section 1396b(r) of this title;

(B) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

* * * * *

(H) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services;

* * * * *

(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1396k of this title;

§ 1396k. Assignment, enforcement, and collection of rights of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State

(a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this subchapter, a State plan for medical assistance shall—

(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under this subchapter and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party;

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is described in section 1396a(*l*)(1)(A) of this title or the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 654(3) of this title) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment assigned under this section and (B) any other matters of common concern.

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

§ 1396p. Liens, adjustments and recoveries, and transfers of assets

(a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan

(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except—

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(B) in the case of the real property of an individual—

(i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and

(ii) with respect to whom the State determines, after notice and opportunity for a hearing (in accordance with procedures established by the State), that he cannot reasonably be expected to be discharged from the medical institution and to return home,

except as provided in paragraph (2).

(2) No lien may be imposed under paragraph (1)(B) on such individual's home if—

(A) the spouse of such individual,

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title, or

(C) a sibling of such individual (who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution),

is lawfully residing in such home.

(3) Any lien imposed with respect to an individual pursuant to paragraph (1)(B) shall dissolve upon that individual's discharge from the medical institution and return home.